IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:10-HC-2211-BR

ARLON DAVID SIMPSON,)	
Petitioner,))	ORDER
v.	,)	
WARDEN TRACY JOHNS,)	
Respondent.)	

On 17 September 2010, Arlon David Simpson ("petitioner") filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (DE # 1.) On 28 December 2010, petitioner filed a motion to dismiss his petition without prejudice. (DE # 11.) In his motion to dismiss, petitioner acknowledges the recent decision in Timms v. Johns, 627 F.3d 525 (4th Cir. 2010), which held that a person against whom a civil commitment action has been initiated under 18 U.S.C. § 4248 must exhaust all remedies within the § 4248 action prior to seeking a writ of habeas corpus under § 2241. Because a § 4248 action remains pending against petitioner in this court (see United States v. Simpson, No. 5:09-HC-2075-BR), petitioner has not exhausted all of his remedies in the civil commitment action.

For the reasons stated in <u>Timms</u>, <u>supra</u>, the motion to dismiss (DE # 11) is GRANTED, and the petition for writ of habeas corpus is DISMISSED WITHOUT PREJUDICE. As a result, petitioner's motion to appoint counsel (DE # 5) and respondent's motion to dismiss (DE # 9) are

DENIED AS MOOT. The Clerk is DIRECTED to close the case.

This 28 January 2011.

W. Earl Britt

Senior U.S. District Judge